

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**TAMMY L. HIERHOLZER, a/k/a  
TAMMY L. HOLTON,**

**Plaintiff,**

**COMPLAINT AND DEMAND  
FOR JURY TRIAL**

**-vs-**

**Civil Action No. 5:10-CV-0982  
(FJS/ATB)**

**THE LAW OFFICE OF JOHN P. FRYE, P.C.,  
JOHN P. FRYE, individually,**

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**Defendants.**

**I. INTRODUCTION**

1. This is an action for actual and statutory damages brought by an individual consumer for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. Section 1692 et seq., (hereinafter "FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.

**II. JURISDICTION**

2. Jurisdiction of this Court arises under 15 U.S.C. Section 1692k(d) and 28 U.S.C. Section 1337.

**III. PARTIES**

3. Plaintiff is a natural person residing in the State of New York, Onondaga County, New York.

4. Defendants are entities and an individual with its principal place of business located in Roanoke, Virginia. The Defendants regularly attempt to collect debts alleged to be due another.

**IV. FACTUAL ALLEGATIONS**

5. On or about March 3, 2010, Defendants mailed to the Plaintiff and the Plaintiff subsequently received a debt collection communication, a copy of which is annexed hereto as Exhibit "A".

6. As a result of the acts alleged above, Plaintiff suffered nervousness, embarrassment, and serious emotional upset.

#### **V. CLAIM FOR RELIEF**

7. Plaintiff repeats, realleges and incorporates by reference paragraphs one through six above.

8. Defendants violated the FDCPA. Defendants' violations were frequent and persistent and include, but are not limited to, the following:

(a) Defendants, in its communication, violated the terms of Section 1692g of the FDCPA by communicating instructions which are contrary to, and tend to obscure and contradict the requirement of that Section.

9. A trial by jury is demanded of all issues in this action.

**WHEREFORE**, Plaintiff respectfully prays that judgment be entered against the Defendants in the amount of:

- (a) \$15,000.00 actual damages;
- (b) \$1,000.00 statutory damages pursuant to 15 U.S.C. Section 1692k;
- (c) Costs and reasonable attorney's fees pursuant to 15 U.S.C. 1692k;
- (d) Granting Plaintiff such other relief as may be just and proper.

Dated: August 12, 2010

/s/ Clifford Forstadt  
**CLIFFORD FORSTADT**  
Bar Roll Number 101681  
Attorney for Plaintiff  
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**TAMMY L HIERHOLZER**

~~XXXXXXXXXXXX~~

**BALDWINVILLE, NY 13027-8223**

Original Creditor: HSBC  
AMERITECH  
Account Number: 5408010025215936  
Client: ATLANTIC CREDIT & FINANCE  
JPF Account Number: 919599  
Balance: \$1,209.06

**Ready to pay now?**

**It's easy:**

**Call toll free:**

**1-866-763-5100**

Monday – Wednesday  
12 pm – 9 pm (EST)

Thursday  
8:30 am – 5:30 pm (EST)

Friday  
9 am – 5 pm (EST)

**Mail your payment to:**

The Law Office of John P. Frye, P.C.  
PO Box 13665  
Roanoke, VA 24036

**Pay by:**

Personal Check  
Check-by-Phone  
Money Order  
Visa  
MasterCard  
Western Union

March 3, 2010

Dear Mr./Mrs. Tammy L Hierholzer:

The above referenced account has been placed with this law firm for collection. We would like to help you resolve this debt and **now is the perfect time.**

Last year, over 65% of all individual income tax returns resulted in a refund. Almost 90 million people found themselves with the cash to help them catch up. You may be the recipient of a tax refund this year and now is the perfect opportunity to relieve the burden of this debt.

If you are anticipating a refund, call us now to set up your payment even if you haven't yet received your refund. We may be able to settle this account for substantially less than what you owe but we must hear from you within 15 days of the date of this letter to avoid further collection activity.

We urge you to take advantage of this opportunity as we are not obligated to renew this offer.

Sincerely,

The Law Office of John P. Frye, P.C.

Office Hours: 8:30 A.M. – 9:00 P.M., Monday – Wednesday; 8:30 A.M. – 5:30 P.M., Thursday; 9:00 A.M. – 5:00 P.M., Friday (EST)

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

**NOTICE: Please See Reverse Side**

EXHIBIT A

8055



**We are required to provide the following information under state law. This is not a complete list of your rights by state. If you do not reside in one of these states, you may still have the same or similar rights under federal or state law.**

**California Residents:** The state Rosenthal Fair Debt Collection Practices Act and the Federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work when they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or [www.ftc.gov](http://www.ftc.gov).

**Colorado Residents:** FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE [www.coloradoattorneygeneral.gov/ca](http://www.coloradoattorneygeneral.gov/ca).

A consumer has the right to request in writing that a debt collector or collection agency cease further communication with the consumer. A written request to cease communication will not prohibit the debt collector or collection agency from taking any other action authorized by law to collect the debt.

**Massachusetts Residents:** You have the right to make a written or oral request that telephone calls regarding your debt not be made to you at your place of employment. Any such oral request will be valid for only ten days unless you provide written confirmation of the request postmarked or delivered within seven days of such request. You may terminate this request by writing to the debt collector.